

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE ROMAN CATHOLIC DIOCESE OF :
BROOKLYN, NEW YORK, :
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Plaintiff, :
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v. :
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GOVERNOR ANDREW M. CUOMO in his :
official capacity, :
:-----

Defendant. :
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**DECLARATION OF BISHOP RAYMOND F. CHAPETTO IN SUPPORT OF
PLAINTIFF'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

I, Bishop Raymond F. Chappetto, Vicar General for The Roman Catholic Diocese of Brooklyn, New York, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746, and state as follows:

1. I submit this declaration in support of Plaintiff's application for a temporary restraining order and preliminary injunction in order to explain how The Roman Catholic Diocese of Brooklyn, New York has successfully implemented comprehensive protocols to prevent the spread of COVID-19 in our churches, and to further explain how Governor Cuomo's COVID-19 order capping in-person attendance at houses of worship in designated "orange" and "red" zones in Brooklyn and Queens to no more than 25 and 10 people, respectively, is wholly unwarranted as applied to the Catholic churches in these zones. Indeed, all of these churches have been operating safely for months now, and the strict attendance caps imposed by the COVID-19 order would grossly infringe on the liberties of those in our faith community for no

legitimate reason, let alone the compelling interest necessary to justify violating our First Amendment rights.

Background

2. Since 2013, I have served as the Vicar General for The Roman Catholic Diocese of Brooklyn, New York, which serves Brooklyn and Queens. The Vicar General is effectively the Vice President—both legally and canonically—and assists with the governance of the 186 different parishes in the Diocese of Brooklyn. I routinely consult with and advise the Bishop of Brooklyn, Nicholas DiMarzio, on decisions ranging from the clergy, to administrative concerns, to church finances.

3. I was initially ordained on May 29, 1971. After my Ordination, I completed priestly assignments at various parishes throughout the Diocese of Brooklyn, including St. Camillus, Rockaway Beach (1971-75), St. Pius V, Jamaica (1975-76), Incarnation, Queens Village (1976- 81), and St. Helen, Howard Beach (1981-83). I have served as pastor at Our Lady of Miracles in Canarsie, Our Lady of the Snows in Floral Park, and most recently at St. Kevin in Flushing. I was ordained a Bishop on July 11, 2012.

4. Before being named Vicar General, I was named Vicar for Clergy and Consecrated Life in 2009, a position which I hold to this day. In that capacity, I serve as the liaison between the Bishop of Brooklyn and all the priests in the Diocese.

5. In all, I have spent nearly 50 years as a pastor and Bishop in Brooklyn and Queens. As a result, I am intimately familiar with the spiritual and material needs and concerns of the Catholic Diocese of Brooklyn and the faith community it serves.

The Diocese of Brooklyn Developed a Comprehensive Response to COVID-19

6. The Diocese of Brooklyn has closely monitored the ongoing COVID-19 pandemic and has consistently taken responsible, affirmative actions to help limit the spread of

the virus and protect our parishioners. In the early days of the pandemic, we assisted parishes throughout the Diocese by drafting and circulating memoranda with up-to-date safety protocols and instructions.

7. On March 16, 2020, we elected to cancel all public Masses in the Diocese until further notice. This decision pre-dated the government-mandated closures that followed later that month. Public Masses did not resume in the Diocese until the weekend of July 4, 2020. During this period of closure, numerous weddings, funerals, and baptisms were either canceled or, as the government-imposed restrictions eased in May and June, were limited to 10 people. This was an extremely painful period for our faith community, not only because of the physical and emotional toll that the pandemic took on parishioners, but also because in-person Mass is of critical spiritual importance in our faith tradition, as is the opportunity to participate in lifecycle events of religious significance—such as baptisms, weddings, and funerals—in church and amidst a full complement of family, friends, clergy, and other members of the faith community. Nevertheless, we imposed and abided by these severe restrictions because it was the right thing to do for the health and welfare of our parishioners.

8. During the roughly four-month period when churches in Brooklyn and Queens were largely closed, the Diocese formed an internal commission to ensure that, when the time came, we would be able to safely welcome members of our faith community back to church. The commission was chaired by Joseph Esposito, the former Commissioner of New York City Emergency Management and former Chief of Department of the New York City Police Department, and included a mix of different stakeholders from our community. The commission regularly consulted with a mental health expert.

9. Over the course of numerous meetings in May and June, our commission developed protocols to ensure the safe reopening of churches within the Diocese. These protocols were updated weekly, and were memorialized in various memoranda that we circulated to each of our parishes. Examples of these memoranda are attached to this Declaration. *See Exhibit A.* We also engaged a media company to help distribute communications about these protocols to the public, including on the Diocese's public website and through social media. *See Diocese of Brooklyn, Coronavirus Updates, available at dioceseofbrooklyn.org/coronavirus-updates/.*

10. During the reopening process, the Diocese relied on the advice of its internal commission and waited an extra week to resume services at the 25% capacity limit imposed by the State. In other words, even though limited-capacity church services could have resumed in Brooklyn and Queens in late June, we elected to wait another week to ensure all proper safety protocols had been communicated to and implemented by each of our parishes. To that end, we assisted our parishes in obtaining all of the supplies they needed to safely reopen, such as masks, disinfectants, fogging machines, and hand sanitizer. We also elected to re-open over the July 4 holiday weekend, which we believed would allow for an even "softer" resumption of the services that had been suspended for nearly four months, as many parishioners had left New York City for the holiday weekend. For those parishes that needed additional time to implement the various COVID-related protocols, their churches opened even later, after the July 4 soft reopening.

11. Prior to reopening, all churches were thoroughly sanitized, either by outside companies or with equipment recommended by Rocklyn Assets Corp., the property office for the Diocese. Parishes that chose to sanitize their churches without outside assistance received

guidance from a comprehensive video assembled by Rocklyn Assets that demonstrated the proper techniques for sanitizing.

12. The church services that resumed in early July and continue to this day bear little resemblance to pre-pandemic church services. In addition to limiting attendance to 25% of each church's capacity, we have required that all parishioners wear masks and only sit in designated areas that ensure proper social distancing. Hand sanitizer is readily available in all churches, and parishioners are encouraged to sanitize whenever appropriate. Additionally, pastors throughout the Diocese have been instructed on all relevant safety protocols, which they take seriously.

13. Additionally, to ensure the safety of parishioners, the Diocese has altered certain fundamental church practices, most notably the giving and receiving of the sacrament of Holy Communion. Holy Communion is one of the most central and sacred acts in the Catholic Church. Catholics believe that, upon consecration, the substance of the bread becomes the Body of Christ and the substance of the wine becomes the Blood of Christ. Ordinarily, parishioners are provided a wafer either in their hand or on their tongue, and at many churches those parishioners are also provided with the option of receiving wine, all of which has spiritual significance. However, in response to the pandemic and to ensure the safety of both parishioners and the surrounding community, Holy Communion can no longer be taken on the tongue, and wine is no longer distributed during Communion at all. These are significant restrictions of core religious practices, but ones that our Diocese has adopted to ensure a proper balance between religious exercise and public safety.

The Protocols Implemented By the Diocese of Brooklyn Have Ensured Safe Worship for the Past Three Months Without Any COVID-19 Outbreak or Spread in Our Churches

14. In the three months since the Diocese reopened its doors, pastors throughout Brooklyn and Queens have informed me that they have seen a steady increase in the number of

people who seek to attend Mass or visit the church to pray. In fact, certain parishes have had to rely on overflow rooms for parishioners attending Mass to ensure that attendance within the church remains below the 25% threshold. These overflow rooms are subject to the same social distancing protocols that apply to the actual churches.

15. The safety protocols that we developed prior to reopening, and then implemented upon reopening, have been successful. Since March, any pastor with a COVID-related question or concern has been encouraged to raise such concerns directly with me, and been directed to report any COVID-related incidents to me as well. Through this reporting structure, I would know whether there have been any instances of COVID-19 spread in our churches. To my knowledge, since our churches reopened in July for Mass and other religious ceremonies subject to our safety protocols, there has not been *any* COVID-19 outbreak or spread in *any* of our churches.

16. As a result of this success, in recent weeks, I had been working with others to develop plans to expand capacity at churches within the Diocese to 33% (as we were permitted to do under the previously applicable government regulations). If not for our proven ability to limit the spread of COVID-19 in our communities, I would not have felt confident planning and preparing for an expansion of church capacity.

Governor Cuomo's Order Would Devastate the Diocese of Brooklyn and Our Community of Faith

17. Pursuant to Governor Cuomo's order, all houses of worship in a "red" zone would be limited to the lesser of 25% capacity or a maximum of 10 congregants. The order also requires that all houses of worship in an "orange" zone limit capacity to the lesser of 33% or a maximum of 25 congregants.

18. It is my understanding, based on a review of information promulgated by the Governor's Office, that there are 24 different churches in our Diocese that would fall into either the red or the orange zone. There are 13 churches in the red zone, including St. Athanasius, Holy Spirit, Our Lady Help of Christians, St. Francis de Chantal, St. Thomas Aquinas (Flatlands), St. Edmund, Good Shepherd, St. Rose of Lima, St. Brendan, Our Lady of Grace, Queen of Peace, Our Lady of the Angelus, and St. Mary Star of Sea. And there are 11 additional churches in the orange zone: Our Lady of Refuge, Immaculate Heart of Mary, St. Vincent Ferrer, St. Rosalia – Regina Pacis, St. Simon and Jude, Resurrection (Gerritsen Beach), Guardian Angel, St. Mark, Our Lady Queen of Martyrs, St. Gertrude, and St. Nicholas of Tolentine.

19. All of the churches in the red zone, and all but one of the churches in the orange zone, can accommodate 500 or more people (the one other church in the orange zone seats 200). Indeed, 12 of these churches—including four in the red zone—can accommodate 750 or more people, and two churches in the orange zone seat over 1,000. Given the size of these churches, the percentage caps are meaningless, because even the smallest church will be limited by the 10 or 25 person cap to well below 25% capacity.

20. By capping capacity at either 10 or 25 parishioners, in churches with seating capacities of between 500 and 1,200, the Governor's order would effectively close these churches: only a minuscule percentage of parishioners would be able to attend services, and it would generally not be feasible to conduct public Mass for 10 or 25 people at a time. These closures would be forced on us, notwithstanding the success of the Diocese's measured and carefully orchestrated reopening efforts to date.

21. The cap on attendance and effective closure of these churches would be excruciatingly painful for parishioners. As a community of faith, assembly in the Church is

extremely important. Physical attendance demonstrates that we belong to a single community: when we gather in person, we show our support for each other and for our faith. For months, our faith community had to sit at home and watch Mass on television, foregoing the sacrament of Holy Communion and in-person worship. As noted above, this was devastating and spiritually harmful, but necessary at the time due to the reality of the pandemic. The consistent but controlled increase in church attendance since we reopened our doors in early July—even though remote Mass is still available—reflects how our faith community needs in-person services for their spiritual lives now more than ever.

22. Yet it is not just Mass that would be affected and infringed upon by the Governor’s order. Baptisms, weddings, and funerals are religiously and spiritually important lifecycle ceremonies in which in-person, in-church participation is key to our faith and community. The period of time during which these in-person services were not available to our community members—when our priests had to preside over drive-by funerals—was extremely difficult. We only recently began to reschedule many of the cancelled baptisms that had been planned before the pandemic-related closure in March. The Governor’s latest reversal, going back to the dark period in which gatherings in churches were effectively prohibited, would cause irreparable harm to our parishioners and, without justification in our case, deny them their constitution right to express their faith at Mass this Sunday.

23. That the Governor’s order would allow for 10 in a “red” zone or 25 people in an “orange” zone to enter a church is little consolation. There is simply no way for a priest to select such a small group of parishioners from his congregation to attend Sunday Mass. Indeed, many parishioners have only recently returned to their churches, and that many of the affected churches could comfortably accommodate many more people while still adhering to strict social

distancing policies. In any event, we will continue to abide by the 25% capacity limitation that the Governor previously imposed and which we have assiduously adhered to in the churches within our Diocese.

24. I want nothing more than for those in my religious community to be safe and well. And I want the same for other religious communities as well. My heart goes out to those who have seen spikes in the number of COVID-19 cases in their religious community. If there were a spike in the number of COVID-19 cases in our community, I would be the first to call for caution, just as the Diocese of Brooklyn voluntarily cancelled in-person services before the State required us to do so in March. But that is not our community. Indeed, the Diocese of Brooklyn has invested tremendous time and resources into ensuring that, once we received the go-ahead this past July to reopen our church doors, those doors would remain open. And we have succeeded in ensuring the safety of our parishioners ever since. It would therefore be a tragedy to once again have to close those doors to our religious community when we have been doing everything right, followed the Governor's orders, made safety our priority, and succeeded in keeping COVID-19 at bay within our churches.

+Raymond F. Chappetto
Most Rev. Raymond F. Chappetto, DD, VG, VE